



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. McTIGUE
DIRECTOR

June 29, 1992
AO-92-13

Leon J. Lombardi, Chairman
Massachusetts Republican Party
114 State Street
Boston, MA 02109

Re: Fundraiser in Public Employee Home

Dear Chairman Lombardi:

This letter is in response to your May 6, 1992, letter requesting an advisory opinion regarding the above referenced matter.

You have stated that you are the Chairman of the Massachusetts Republican State Committee. You hold no appointed position with the state, local or municipal government of Massachusetts. However, your wife, Sara Lombardi, is an employee of the General Court. She, therefore, receives compensation from the Commonwealth. You and she jointly share ownership of your home in Easton, I assume, as either joint tenants or tenants by the entirety.

You have asked whether you may host fundraising events in your jointly owned home, the proceeds of which will go to the Massachusetts Republican State Committee. You have also asked, if you may host such a fundraising event, may your wife attend the event in your home and speak to guests before, during or after the event. Finally, you ask if it would make a difference if the purpose of the event was to raise funds solely for deposit into the Republican State Committee's federal account as compared with its state account.

M.G.L. c.55, s.13 provides, in relevant part, that:

No person employed for compensation, other than an elected officer, by the commonwealth or any county, city or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any

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political committee, or for any political purpose whatever, but this section shall not prevent such person from being members of political organizations or committees. (Emphasis added).

Since 1984 it has been the position of the Office of Campaign and Political Finance ("Office") to advise a public employee or his/her spouse that the public employee spouse would be indirectly soliciting funds in violation of section 13 if a political fundraising event were to occur in his or her home if the home was jointly owned. This policy was addressed in AO-84-06, a 9-part advisory opinion concerned with this one issue, and has not changed. I have enclosed a copy of that opinion for your information.

Therefore, it is the opinion of this Office that the hosting of a fundraising event at your home for the support of the Massachusetts Republican Party would be considered at least an indirect solicitation by your wife in violation of M.G.L. c.55, s.13, assuming, of course, that such a fundraising event were held with her knowledge and consent, tacit or explicit.

While your second question is moot by virtue of the above conclusion, I note that the Office has never advised that a public employee may not attend or speak with guests at any fundraising event provided they are not actually soliciting funds for a political purpose. Therefore, your wife may accompany you to any political fundraising event held in any location (other than your jointly held residence) where she may greet and speak with guests regardless of whether it is hosted by you or by someone else.

Your last question asks if it makes a difference if the funds are raised solely for the federal account of the Republican State Committee. The Federal Election Campaign Act of 1979, as amended ("Act") provides that its provisions, and the regulations promulgated thereunder preempt State law with regard to most matters. However, the Act does not preempt state laws which regulate the political activities of state and local employees.

In 1989, the Federal Election Commission ("Commission") specifically considered the question whether the first sentence of M.G.L. c.55, s.13 as quoted above was preempted by the Act. See FEC Advisory Opinion No. AO 1989-27. The Commission concluded in that opinion that :

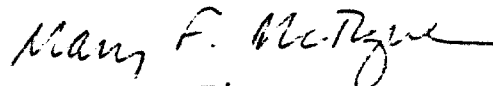
[T]he first portion of section 13, insofar as it relates to a solicitation by the employee himself or herself or the personal receipt by the employee, is not preempted by the Act.

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This Office as well as the Attorney General's Office has concurred with this portion of the Commission's conclusion. Therefore, it is this Office's opinion that the prohibition in section 13 regarding direct or indirect solicitation and/or receipt of political contributions applies to all persons employed for compensation by a state, county or local governmental entity regardless of whether the funds are being solicited for the state or federal account of a political committee.

This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c.55.

Very truly yours,


Mary F. McTigue
Director

Enclosure